



County of Los Angeles  
**CHIEF EXECUTIVE OFFICE**

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**REVISED**

WILLIAM T FUJIOKA  
Chief Executive Officer

July 23, 2012

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To: Supervisor Zev Yaroslavsky, Chairman  
Supervisor Gloria Molina  
Supervisor Mark Ridley-Thomas  
Supervisor Don Knabe  
Supervisor Michael D. Antonovich

From: William T Fujioka  
Chief Executive Officer

A handwritten signature in black ink, appearing to read "W. T. Fujioka", is written over the printed name and title.

**MOTION THAT THE BOARD OF SUPERVISORS INSTRUCT THE SACRAMENTO LEGISLATIVE ADVOCATES TO SUPPORT AB 1907 (LOWENTHAL) WHICH WOULD SHORTEN THE TIMEFRAME FOR INMATES IN COUNTY JAILS TO RECEIVE LONG-TERM MEDICATIONS TO IMPROVE THEIR MENTAL HEALTH, AND ENSURE THAT TREATMENT IS CONSISTENT WITH AN INMATE'S DUE PROCESS RIGHTS, INCLUDING THE RIGHT TO COUNSEL AND THE EVIDENTIARY STANDARD OF CLEAR AND CONVINCING EVIDENCE - (ITEM NO. 16-A SUPPLEMENTAL AGENDA OF JULY 24, 2012)**

Item No. 16-A on the July 24, 2012 Supplemental Agenda is a motion by Supervisor Knabe recommending that the Board of Supervisors support AB 1907 (Lowenthal) which would shorten the timeframe for inmates in County jails to receive long-term medication to improve their mental health, and ensure that treatment is consistent with an inmate's due process rights, including the right to counsel and the evidentiary standard of clear and convincing evidence.

**Background**

Under existing law, no person incarcerated in a State prison or county jail may be administered a psychiatric medication without informed consent. The law also provides due process rights to inmates in county jails subject to involuntary administration of psychiatric medications because they are severely mentally impaired or a danger to self or others. However, current procedures to obtain court approval for the involuntary administration of psychiatric medications to jail inmates include an increasingly stringent set of reviews and hearings which may result in the delay of long-term treatment for inmates with serious mental health disorders.

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AB 1114 (Chapter 665, Statutes of 2011), authored by Assembly Member Lowenthal, streamlined the process for inmates in State prisons to receive involuntary psychiatric medications by retaining the formal adversarial hearing as required by previous court decisions and the California Penal Code, but eliminated the certification review hearing that preceded it thereby shortening the timeframe to review from 45 days to a maximum of 30 days. The bill also ensured that the State prison inmates are provided with appropriate mental health treatment consistent with his or her due process rights. However, the provisions in AB 1114 do not apply to inmates in county jails.

AB 1907, which as amended on June 19, 2012, would extend the streamlined process established in AB 1114 to inmates in county jails and would allow a county mental health department to seek a court order to involuntarily medicate inmates with a serious mental disorder if the following conditions are met:

- 1) The inmate is gravely disabled and lacks the capacity to refuse treatment with psychiatric medications;
- 2) A psychiatrist or psychologist has determined that the inmate is a danger to themselves or others;
- 3) A psychiatrist has prescribed one or more psychiatric medications for the treatment of an inmate's disorder, has considered the risks, benefits, and treatment alternatives to involuntary medication, and has determined that treatment alternatives to involuntary medication are unlikely to meet the needs of the inmate;
- 4) The inmate has been advised of the risks and benefits of, and treatment alternatives to the psychiatric medication and refuses, or is unable to consent to the administration; and
- 5) The inmate is provided a hearing before by a superior court judge or by a court appointed commissioner, referee or hearing officer.

AB 1907 specifies that inmates must be provided counsel and written notice at least 21 days prior to the court hearing unless emergency or interim medication is being administered in which case the inmate would receive an expedited hearing and access to counsel. The bill also specifies that inmates may file an appeal of the medication order in the Superior Court or in the Court of Appeal.

AB 1907 is not intended to prohibit a physician from taking appropriation action in an emergency in which case an inmate may be involuntarily medicated pursuant to an ex parte order until a hearing can be held. An emergency is considered to exist when there is a sudden and marked change in an inmate's mental health condition which requires immediate intervention to protect life and to prevent serious bodily harm to the inmate or others, and it is impractical due to the seriousness of the emergency to first obtain informed consent.

Medication may only be administered for as long as the emergency exists or up to 72-hours. However, if the county mental health department's clinicians determine that an inmate's health or well-being is jeopardized due to a serious mental disorder and requires medication beyond the initial 72-hours pending a full hearing, the county may seek to continue the medication by giving notice to the inmate and his or her counsel to seek an ex parte order pending a full hearing. The court would have three days to review the ex parte request and determine the merits of the order. If the order is issued, a psychiatrist may continue to administer the medication until the hearing.

The Department of Mental Health (DMH) indicates that the administration of psychiatric medications is a critical factor in stabilizing a person with a serious mental disorder and helps the individual benefit from other mental health treatment. However, under current law, approval to involuntarily administer needed medications to inmates in County jails is limited to inmates being treated in the jails' 40-bed psychiatric unit or inmates adjudicated incompetent to stand trial for misdemeanor offenses. This limited authority to involuntarily administer needed medication may result in treatment delays and the deterioration of an inmate's condition. According to DMH, AB 1907 would expedite the process to provide needed psychiatric medications for those individuals in County jails who suffer from debilitating mental health conditions.

AB 1907 is supported by the National Association of Social Workers, California Chapter; California Psychiatric Association; California Council of Community Mental Health Agencies; and Legal Services for Prisoners with Children. There is no opposition on file and the bill has not received any negative votes thus far. The bill is scheduled for a hearing in the Senate Appropriations Committee on August 6, 2012.

### **Conclusion**

**Because there is no existing Board policy to support legislation which would shorten the timeframe for inmates in County jails to receive long-term medication to improve their mental health, and ensure that treatment is consistent with an inmate's due process rights, including the right to counsel and the evidentiary standard of clear and convincing evidence, support for AB 1907 is a matter for Board policy determination.**

We will continue to keep you advised.

WTF:RA  
MR:VE:ma

c: Executive Office, Board of Supervisors  
County Counsel